

New Rules for Home and Community Based Settings & Person-Centered Planning



Behavioral
Health
Division

Information for Advocates and families

Introduction

In March 2014, the federal government passed new rules for the types of services that can be covered through Medicaid-funded home and community-based (HCB) services. The new rule will help make sure that people who use the waiver HCB services are truly integrated into their communities. States will not be allowed to use federal Medicaid dollars to pay for HCB services in settings that isolate people from the community or that do not show respect for people's right to privacy, dignity, and self-determination. States may need time to get all of their settings into compliance so the Centers for Medicaid and Medicare Services (CMS) allowed states to create five-year transition plans explaining how they will follow the new rule. We had to draft the transition plan and give our stakeholders, including people with disabilities, family members, guardians, providers, and other advocates the opportunity to comment on the transition plans. Now that our transition plan has been submitted to CMS, we want to make sure we give information to our participants, guardians, and other advocates that helps explain the new rules and how they may affect you.

Definition

Home and community-based services, or HCB Services, are a type of service covered by Medicaid. Many people with disabilities rely on HCB services in order to help them live in their own homes. These services are an alternative to institutional care and help people live with support in the community in which they choose.

The new [Home and Community Based Setting federal regulations](#) are found at 42 CFR 441.301(c)(4)-(5).

Purpose

The purpose of the new rule is to make sure that states use HCB funding for programs that are truly integrated into the community, and not in group settings that isolate people from the community. The rules require HCB services to be provided in a setting that gives people real opportunities to work, live, and socialize in the community.

New Standards

The new rule includes standards that all home and community-based services need to meet:

- ✓ Integration into the Community
- ✓ Individual Choice
- ✓ Individual Rights
- ✓ Autonomy
- ✓ Choice Regarding Services and Providers

**Provider-Owned or Operated Residential Settings must meet additional standards, which are discussed on page 4.*



1. Integration into the Community

The rule requires that services offer full opportunities for integration into the community.

All people in waiver services need to have these opportunities – not just people who are labeled as “high-functioning” or have fewer support needs. Providers cannot assume that a person is too disabled to work or to control their own money. Rather, providers should make sure that everyone has the support they need to do these things.

For example, some people may need a ride to a store or event and support by a staff person. Without that support, the participant won’t have full access to the community even if the provider says that they’re “free to go into the community” whenever they want to. People may also need to meet with a benefit specialist or a job coach in order to have real access to employment and real opportunities to control their own money. The rule requires that people receiving HCBS have access to the greater community “to the same degree” as other people. Therefore, a provider cannot be really considered community-based if they only let people go on occasional or scheduled trips into the community. Like people without disabilities, people receiving HCB services should be able to choose where they go and when. At the same time, services can still be community-based if they’re located in a rural area, as long as people receiving HCB services can travel around and participate in community life in the same way that other people living in that area.

Some locations of service settings make it more difficult for participants to integrate regularly in the community. Based on public comment during our forums, Wyoming will not disqualify a setting due to a location in an industrial park or commercial zoning location. They will be considered a setting that “does not comply without modifications”. This means that settings in these locations will need to provide evidence that shows how they provide regular access to the broader community and how they encourage integration in the setting as well. Compliance will be determined based on the opportunities and experiences of the participants in services.

The regulation does not require individuals to participate in activities in the community to an extent greater than the individual chooses. Providers must ensure each service setting supports and optimizes a person’s access to the broader community. The number of participant outings will not be enough evidence when looking at the individual’s “experiences” because the standard is about more meaningful integration and building up one’s social circle. These changes will likely result in a culture shift, since people in the community are key to overcoming the barriers to accessing activities and building more meaningful relationships and natural supports outside of the HCB service system.

Integration into the community means people must be able to:

- Work alongside people without disabilities, and be paid the same amount as people without disabilities;
- Engage in community life, which can include being in clubs, community events, going to church, volunteering, and/or making and keeping friends outside the service setting;
- Control their own money, possessions, and other resources; and
- Receive services “in the community” and not in isolated settings.

2. Individual Choice

The new rule also requires that people receiving HCB services have choices about where they get services. The new rules protect the rights of a participant to exercise informed choice, but the choices they are given should be more descriptive than a provider list or a list of setting addresses on a piece of paper. Participants can choose the living environment, services, providers and types of supports based on one’s needs and preferences, but to make an “informed” choice, the participant needs more information and often a tour or experience in a different setting to understand the options fully.

You should be able to choose which services you want, Where you want to get them, and how they are delivered.

Participants must be offered the option of services in settings that are not “disability-specific”. For example, participants must have the option of getting in-home services while living in their own apartment instead of having to live in a group home just for people with disabilities. Choices must be realistic and representative of

the person's resources. People receiving HCB services also must have the option of choosing a private room instead of having to live with a roommate. The choices have to be based on the person's own needs, preferences, and situation. A provider cannot offer someone a chance to live in their own apartment if the apartment isn't accessible or affordable. Even if a person has a choice of settings, the setting they do choose needs to meet all the other requirements of the new rule. A setting that is isolated or that does not offer full access to the community cannot be considered "home and community-based" simply because the individual had the option of living in a non-disability specific setting.

During the public comment, people voiced concern that more choice will lead to more risk. The state understands that individualized services require more choices and the right to take risks. The planning process requires teams to develop back up plans and discuss the risks associated with the person's choices, but the threat of risk should not be a reason that a person is denied choice. A person-centered model balances the dignity of risk in exercising self-determination, and encourages the person's team to explore ways to support the person and provide for back up plans in case a choice leads to a negative experience. For rights that must be restricted the team must follow the requirements of the new rule, *see page 5 of this guide*.

3. Individual Rights

The new rules emphasize that participants have a right to "privacy, dignity and respect, and freedom from coercion and restraint." These rights include the right to lock one's own bedroom or bathroom door and the right to choose a private room or choose a roommate. It can also include the right to talk privately with friends and family, whether over the phone or the internet. Many participants have said that privacy and dignity are a big part of the difference between an institution and a community-based setting.

Providers must train staff on treating participants with the utmost respect, dignity and honoring one's privacy in all service delivery. The participant must have all rights honored until there is a reason to restrict a right that has been prior approved in the plan of care. Rights are not privileges or things that people have to earn. To ensure rights are respected, the provider and the state must get feedback from participants and guardians regarding their experiences and if they feel they are shown respect for their rights. The Division recently developed a new *Rights Booklet* and it is located at: <http://health.wyo.gov/ddd/ComprehensiveandSupportsWaiver.html>.

Autonomy means having the freedom from external control or influence.

It means you should be able to choose for yourself!

4. Autonomy

The new regulations specify that participants must be able to make day-to-day choices for themselves, including choices about what they do every day, who they talk to, what kinds of relationships to be part of, and where they spend their time. Providers can't "regiment" these choices, such as by offering only a few options or by requiring people to keep to a rigid schedule. Participants need the same kinds of choices and freedoms that people without disabilities usually have. This doesn't necessarily mean that people who receive HCB services should never have to do certain things at certain times. For example, a participant working at a store will still have to show up at the store at their scheduled times, just as anyone else who works at that store. But participants should have the ability and the support they need to make last-minute plans or decisions about how to spend their free time, just like everyone else.

This same idea applies to rules that participants have to follow based on where they live versus provider rules for participants in a specific setting. For example, if a person receives supported living services while living in an apartment that the participant owns or leases with a non-provider, he or she may have to follow normal rules of apartment living, like paying rent on time and avoiding loud activities late at night. But the participant should not have to follow rules that other people living in apartments don't have to follow, like having a night-time curfew, strict visitor policies, choosing certain furniture or limits on decorations.

Participants may likely need support to make these choices. For example, they might need help remembering appointments, choosing meals, and deciding what to do during the day. People might need communication technology or other forms of support in order to communicate and have relationships with other people. Someone's need for support cannot be used as a reason to take away options, or to only provide supports when the person makes the choices that the provider wants them to make.

Autonomy and the focus on a non-regimented day does not mean that a participant cannot design a schedule that meets one's wishes, which should be a part of the person-centered plan of care. But the schedule and process for changing the schedule should allow the person to participate in unscheduled and scheduled access to the community, leaving when they want and engaging in last minute opportunities if they can access the transportation and support to go.

5. Choice Regarding Services and Providers

Participants must be able to choose the services they get and who provides those services. Whenever possible, people should be encouraged to “self-direct” their own services by choosing their own support workers and deciding which days and times of day they need their support workers. Nobody should have to accept services that they don't want. People also need a meaningful choice of services and providers. If a person is offered a choice of many providers, and only one of them actually offers the services that the person needs or is actually available, that would not be considered a meaningful choice.

The new rule requires that services be chosen through a “person-centered service planning process.” This process, which has to happen at least once a year, is supposed to help make sure that people are getting the services that they want from the providers they want. People need to be given meaningful choices during this process, including the ability to get services in non-disability-specific settings. There must be safeguards in place to make sure that the process isn't driven by the same service providers who are going to be providing HCB services to the person, unless there is nobody else who can help with the process. This is why conflict free case management is essential in the new standards, and is a part of the new federal rules. Conflict free case management helps prevent service providers from letting their own interests influence the planning process.

Additional Standards for Provider-Owned/Operated Residential Settings

The new rule also includes many rules that apply to residential settings, including group homes, host homes, and apartment complexes owned or operated by a provider. In this sort of setting, CMS acknowledges the higher risk that people may be isolated from the community or that their day-to-day choices will be limited for the convenience of the provider. For example, the provider might want to set meal times and curfews because these are easier than accommodating multiple people's schedules. The new rules say that waiver services can't restrict people's choices and daily activities.

During the person centered plan of care team process, the team can make restrictions on these rights if needed based on individual need and if certain things are documented in the plan of care. For example, staff may need to remind a person with diabetes who needs help regulating blood sugar not to eat at specific times. But the group home cannot force all housemates to eat only at certain times simply because one of the housemates needs to keep a schedule or because it's more convenient to have a schedule. For more information on the process to restrict someone's rights, *see page 6 of this guide*.

The provider-owned setting also needs to be physically accessible to those living in it. Unlike the privacy and autonomy-related requirements, this requirement can't be changed under any circumstances. This is because, while some people may need to follow a food schedule, nobody specifically needs a housing arrangement that doesn't meet their accessibility needs.

Participants living in provider-owned settings must:

- Have the same rights and responsibilities as regular tenants under state law, including protections against being kicked out of their homes without notice;
- Have the right to privacy in their bedrooms and living rooms, including the ability to lock their own doors and have a key or lock access. Only “appropriate staff” should have extra keys to these rooms.
- People also need to have the right to choose their own roommates and choose their own furniture and decorations;
- Have the freedom and support to control their own daily schedules;
- Have access to food at any time; and
- Have the right to have visitors at any time.

How we got to the new standards – A brief history

The Supreme Court issued the *Olmstead* decision in 1999, which found that segregation of people with disabilities was discrimination under the Americans with Disabilities Act (ADA). As a result, when states provide services to people with disabilities, services must reflect the most integrated setting appropriate to a person's needs. The court decision specifies that people are entitled to receive supports and services that they need to move out of the institution and into the community. Implementation of the Supreme Court's decision in *Olmstead* has not transformed the service system quickly, however. Many people with disabilities remain in institutions or congregate, segregated settings, such as group homes. The new rules require more focus on moving away from congregate models and preventing more large settings from re-populating.

Many people still feel that people with significant disabilities cannot live in their own homes or in semi-independent or independent settings. Studies have shown that scattered-site housing model works for people with a range of disability-related support needs. Research has shown that, with the right supports, people with a wide variety of support needs – including persons with complex medical needs, people who have both developmental and psychiatric diagnoses, people with a history of involvement in the criminal justice system, and people who have spent many years in an institution – can live successfully in truly integrated community settings.

The new rules require states to have scattered-site housing options, and housing options that are not disability specific. The Department of Justice, tasked with enforcing *Olmstead*, issued guidance that says segregated settings are inconsistent with *Olmstead*'s integration requirements. States should avoid creating and operating such facilities, or financing placement of individuals with disabilities in these facilities. As Wyoming moves forward with certifying waiver providers and new provider settings, we must be sure to focus on fully integrated and scattered site options to comply with the direction of these new rules.

Unless we can prove that a setting does not isolate people and each setting is really community-based, people on the waiver cannot receive waiver services after the end of the transition period. Services in these settings would have to be funded through another program.

Person-Centered Service Plans

Under the new rule, a person should have a plan of care that is truly person-centered. He/she should lead the process of making the plan of care as much as possible and the team members should support them to lead. Unless absolutely necessary, people providing the services should not direct the process. The planning discussions should ensure that ways to get involved in the community are captured, as well as assurances that choices are being honored for which services, locations, and providers are on the plan. It should also include information about the person's strengths and preferences, support needs, goals, and any existing safety risks. The plan of care needs to be accessible and in plain language so everyone can understand it.

Process to Restrict a Right

For a participant who has a need for a right to be restricted, the person and their team must make decisions based on that person's assessed need for a restriction, and not base a decision solely on a diagnosis, medical condition or a possible behavior that happens on occasion. Health and safety concerns addressed by a restriction must not be based on general fears or concerns because of the person's disability or be based on provider convenience because of other people served in the home. The new federal rules specify that any modification or restriction of a right must meet the following requirements and be documented in the plan of care:

- 1) Identify the specific and individualized assessed need.
- 2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- 3) Document less intrusive methods of meeting the need that have been tried but did not work.

Person-centered principles

- 1 Listening** – hearing and supporting an individual's choices and what they want in life
- 2 Community** – relationships with families, friends, and members of the community are at the center of planning
- 3 Self-determination** – personal choice and control are supported
- 4. Talents and Gifts** – the experience, talents, and contributions of individuals, families, and communities are strengthened and supported
- 5 Responsibility** – there is shared responsibility for supports and choices

Resource: VCU PCP training

- 4) Include a clear description of the condition that is directly proportionate to the specific assessed need.
- 5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- 6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- 7) Include the informed consent of the individual.
- 8) Include an assurance that interventions and supports will cause no harm.

The participant must have all rights honored until there is a reason to restrict a right that has been prior approved in the plan of care. Rights are not privileges or things that people have to earn. The state has additional requirements for the use of restrictions and restraints by providers, as specified in Chapter 45 of Wyoming Medicaid Rules. We also have the *Positive Behavior Support Plan Manual* available on the Division's website to help teams in this area: <http://health.wyo.gov/ddd/ComprehensiveandSupportsWaiver.html>.

Gathering feedback on Individual Experiences

To see if a setting has home and community based qualities and practices, the State must work with providers, participants and guardians to evaluate all service settings. This process involves looking at how people are integrated, offered access to the community, supported in building and maintaining relationships with friends and people without disabilities, and offered options and choices. Integration is difficult to measure because it is not just the number of outings a person goes on, the types of outings or size of group that goes out. The State understands that integration and segregation is "attitudinal" and can differ based one's personal experiences. When we analyze provider settings for compliance with the new regulations, we need to have evidence from the provider that an individual's experience in the setting meets the expectations in the new rules, or else the provider will need to make modifications to their business practices to meet and maintain compliance.

Online survey link:
<https://www.surveymonkey.com/s/publicHCBSSurvey>
 Or you may complete the survey on the last page of this booklet.
 Contact us at 307-777-6494 to request another copy.

Here is how you can help! We have an open survey process, so you can provide feedback on your individual experiences. Guardians and case managers are welcome to complete the survey too!

Provider Transition Plan

The provider will be issued a report on the standards where they are not yet in compliance. The provider must then develop a transition plan to show how they will meet annual milestones and fix issues of concern in their program each year. All areas must meet full compliance when the milestone says it will be completed. All modifications are required to be complete by March 16, 2019.

Statewide Transition Plan

The State's transition plan must detail how we will conduct ongoing compliance enforcement with the provider and state's transition milestones, including both routine monitoring and investigation and resolution of individual complaints. The Wyoming Statewide Transition plan is located at: <http://health.wyo.gov/ddd/index.html>.

Resources

- Full text of the federal regulation and all of the associated guidance: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>
- ASAN. (2014) Defining Community: Implementing the new Medicaid Home and Community-Based Services rule. Retrieved from <http://autisticadvocacy.org/wp-content/uploads/2014/09/Guide-for-Administrators.pdf>
- Behavioral Health Division-DD Section Home page: <http://health.wyo.gov/ddd/index.html>
- Additional guides and resources for participants and guardians: <http://health.wyo.gov/ddd/ComprehensiveandSupportsWaiver.html>

To receive this information in an alternative format, please contact the Behavioral Health Division.

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Participant or Guardian Survey

Participant Full Name: _____ Guardian Name (if applicable): _____

Provider(s): _____ Case Manager: _____

Questions relating to Waiver Satisfaction	Mark your response		Comments
1. Did you have a choice in the services you receive?	Yes	No	
2. If you are 18 or older, were you informed of other options where you could live?	Yes	No	
3. Did you have full choice in providers?	Yes	No	
4. Have you visited other places you could live in the past year?	Yes	No	
5. Do you want to do something else during the day then what you are currently doing?	Yes	No	
6. Were you involved in developing your plan of care?	Yes	No	
7. Do you feel that your providers listen to you?	Yes	No	
8. Do you know how to request new providers or services?	Yes	No	
9. Do you have input in choosing your daily schedule?	Yes	No	
10. Do you have input in how your money is spent?	Yes	No	
11. Do you have input in how you spend your free time?	Yes	No	
12. Did you go out for entertainment in the last month?	Yes	No	
13. Did you go to church or cultural event in the past month?	Yes	No	
14. Do you have a key to where you live and your room?	Yes	No	
15. Do you have friends you hang out with other than paid staff or family?	Yes	No	
16. Do providers drive you into the community, to stores, movies, or other places you like to go?	Yes	No	
17. Do you get out as often as you want?	Yes	No	
18. Do you have access to food when you want to eat?	Yes	No	
19. If not working, do providers help you to find a job?	Yes	No	
20. If you are working, do your providers help you be successful at work?	Yes	No	
21. Are you satisfied with the waiver services you receive?	Yes	No	
If not, what would you change?			



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Send your responses to: Behavioral Health Division
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